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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

KELLY L. MACNEIL, R.C.P.
13320 Olive Tree Lane
Poway, CA 92064

Respiratory Care Practitioner License No. 22486

Respondent.

Case No. D1-2006-10

**PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 2, 2002, the Respiratory Care Board issued Respiratory Care Practitioner License No. 22486 to Kelly MacNeil, R.C.P. (Respondent). The Respiratory Care Practitioner License was in effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

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3. In a disciplinary action entitled "In the Matter of the Accusation Against Kelly L. MacNeil," Case No. R-2054, the Respiratory Care Board, issued a decision, effective May 31, 2007, in which Respondent's Respiratory Care Practitioner License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3754 of the Code states: “The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753.”

8. This Petition to Revoke Probation is also brought before the Board under the authority of the Board's decision in Case No. R-2054, which provides in pertinent part as follows:

“IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 22486 issued to Respondent KELLY L. MacNEIL is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

“1. COMPETENCY EXAMINATION Within 6 months of the effective date of this decision, and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees (\$190).

1 "...."

2 **COST RECOVERY**

3 9. Section 3753.5, subdivision (a) of the Code states:

4 "In any order issued in resolution of a disciplinary proceeding before the board,
5 the board or the administrative law judge may direct any practitioner or applicant found to have
6 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
7 investigation and prosecution of the case."

8 10. Section 3753.7 of the Code states:

9 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
10 include attorney general or other prosecuting attorney fees, expert witness fees, and other
11 administrative, filing, and service fees."

12 11. Section 3753.1 of the Code states:

13 "(a) An administrative disciplinary decision imposing terms of probation may
14 include, among other things, a requirement that the licensee-probationer pay the monetary costs
15 associated with monitoring the probation. "

16 **CAUSE TO REVOKE PROBATION**

17 **(Failure To Pass Written Competency Examination)**

18 12. At all times after the effective date of Respondent's probation, May 31,
19 2007, Condition 1 required that respondent take and pass a written competency examination, as
20 designated by the Board, within 6 months.

21 13. Respondent's probation is subject to revocation because she failed to take
22 and pass a written competency examination within 6 months. The circumstances are as follows:

23 (a) The National Board of Respiratory Care (NBRC) administers the Board's
24 examination for licensure as a respiratory care practitioner in the State of California. Passage of
25 the NBRC's Entry Level Certified Registered Technician (CRT) Examination is required for
26 Board licensure pursuant to Code section 3735.

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1 (b) The Board also uses the NBRC's Entry Level CRT Examination as its
2 Competency Examination to determine fitness to practice when there is reasonable cause to
3 believe that the person providing respiratory care is unable or unwilling to practice respiratory
4 care with reasonable skill and patient safety and/or when ordered by the Board as a term and
5 condition of probation.

6 (c) On or about December 4, 2007, respondent took the NBRC's Entry Level
7 CRT Examination [Board's Competency Examination]. Respondent failed the examination.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Revoking the probation that was granted by the Respiratory Care Board of
12 California in Case No. R-2054 and imposing the disciplinary order that was stayed thereby
13 revoking Respiratory Care Practitioner License No. 22486 issued to Kelly L. MacNeil, R.C.P.;

14 2. Revoking or suspending Respiratory Care Practitioner License No. 22486,
15 issued to Kelly L. MacNeil, R.C.P.;

16 3. Ordering Kelly L. MacNeil to pay the Respiratory Care Board the costs of
17 the investigation and enforcement of this case, and if probation is continued or extended, the
18 costs of probation monitoring; and,

19 4. Taking such other and further action as deemed necessary and proper.

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21 DATED: February 15, 2008

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24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant